



CROATIA: EXISTING LAWS ARE FAILING VICTIMS OF DOMESTIC VIOLENCE

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INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Croatia in November 2020. In it, Amnesty International evaluates the implementation of recommendations made to Croatia in its previous UPR, including in relation to efforts to combat gender-based violence, including domestic violence.

It also assesses the national human rights framework with regard to existing legal and policy measures designed to address widespread domestic violence and the highly problematic definition of rape, which is not in line with international standards.

With regard to the human rights situation on the ground, Amnesty International raises concerns about persisting challenges facing women's access to legal and safe abortion and sexual and reproductive rights.

Finally, the organisation notes serious concerns about systemic pushbacks and collective expulsions of refugees and migrants attempting to enter the country and in particular the allegations of frequent and brutal violence perpetrated by the Croatian police against people fleeing conflict, persecution and poverty.

FOLLOW UP TO THE PREVIOUS REVIEW

During its second UPR in 2015, Croatia received a total of 167 recommendations, of which it accepted 156, some of which it considered to be implemented or in the process of being implemented, partially accepted six recommendations, and rejected five recommendations.¹

A significant number of the recommendations addressed the urgent need to combat widespread violence against women, including domestic violence, by improving legislation and adopting concrete measures aligned with international law and standards.² While Croatia has made considerable advances in this area since the last review, this submission highlights Amnesty International's remaining concerns in relation to persisting challenges in how the country addresses gender-based violence that prevent many victims from seeking protection under the law.

¹ Report of the Working Group on the Universal Periodic Review, Croatia, Addendum, A/HRC/30/14/Add.1.,7 September 2015.

² A/HRC/30/14, recommendations 99.18-99.22 (Turkey, Italy, Austria, Spain, Germany), 99.25 (Czech Republic), 99.27-99.31 (Angola, Trinidad and Tobago, Indonesia, Mexico, Australia), 99.50-99.52 (Sierra Leone, Republic of Korea, Thailand), 99.58 (Norway), 99.61 (Poland), 99.82 (Israel), 99.84 (Malaysia), and 99.108-99.109 (Philippines, Brazil).

THE NATIONAL HUMAN RIGHTS FRAMEWORK

EFFORTS TO COMBAT GENDER-BASED VIOLENCE

Since the last review, Croatia has made notable progress in combating gender-based violence. In April 2018, following a vigorous public debate, the country ratified the Council of Europe Convention on Prevention and Combating Violence against Women and Domestic Violence (the Istanbul Convention), which entered into force in October 2018. While this is undoubtedly a positive development, the legislative, policy and institutional framework in Croatia is yet to be fully harmonised with the provisions of the Istanbul Convention. The country has taken a number of concrete steps to combat domestic violence over the past several years. Nevertheless, the recently adopted legal and policy measures still fall short of international standards and contain restrictive provisions that limit access to rights for many victims of gender-based violence. Amnesty International is also concerned that the “traditional family unit” continues to be prioritised over individual rights and the safety of women, leaving many victims of gender-based violence without legal protection (see also below).

LAW ON PROTECTION AGAINST DOMESTIC VIOLENCE

The new Law on Protection against Domestic Violence, which entered into force in 2018, expands the definitions of domestic violence to include psychological and economic violence and broadens the definition of “family” to encompass unmarried intimate partners.³ The law also strengthens existing misdemeanour sanctions for domestic violence, and provides additional remedies, including protective measures, for the survivors. Nevertheless, the scope of the law remains somewhat limited, as it continues to exclude persons who do not have children with their partner, who do not share the same residence with their partner, or who have lived with their partner for less than three years.⁴ These restrictions are in contravention of the Istanbul Convention, which defines domestic violence as “all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim”.⁵ The overly restrictive provision in the Croatian law leaves a considerable number of individuals without adequate legal protection and, in some cases, forces them to privately prosecute claims against their abusers.

³ Law on the Protection against Domestic Violence (Zakon o zaštiti od nasilja u obitelji), Official Gazette 70/17, Article 8 (Persons to whom the law applies) and Article 10 (Domestic violence).

⁴ Neither the Law on Protection against Domestic Violence nor the Family Law recognizes these relationships as a “family” and therefore individuals in such relationships are not entitled to protections under the Law on Protection against Domestic Violence. For more discussion, see *Joint submission by Autonomous Women’s House and the Advocates for Human Rights to the UN Human Rights Committee’s 127th session*, Periodic review of Croatia, 30 August 2019. See also Gender Equality Ombudsperson of the Republic of Croatia, *Izvešće o radu Pravobraniteljice za ravnopravnost spolova za 2018. godinu*, p. 115, available at <https://www.prs.hr/attachments/article/2645/Izve%C5%A1%C4%87e%20o%20radu%20Pravobraniteljice%20za%20ravnopravnost%20spolova%20za%202018.%20godinu~.pdf>

⁵ Council of Europe Convention on Prevention and Combating Violence against Women and Domestic Violence (Istanbul Convention), Article 3 (b).

Furthermore, the new law does not adequately differentiate between victims and abusers, as it does not recognise that women are found to be overwhelmingly the victims of violence in the family, while men tend to be the perpetrators of domestic violence in 90% of all cases.⁶ Because of the ambiguous wording of the law and the inadequate awareness of gender-based violence dynamics by the police and the courts, victims reporting violence are often confused with the perpetrator, forced to provide statements in the presence of the perpetrator and not fully informed about their rights.⁷ This has also led to situations where in some cases women who report violence in their families end up being questioned and arrested as co-perpetrators,⁸ and even sanctioned, because they acted in legitimate self-defence or verbally insulted the perpetrator. In 2015, the UN Committee on the Elimination of Discrimination against Women (CEDAW) asked Croatia to abolish the practice of dual arrests.⁹

NATIONAL STRATEGY FOR PROTECTION AGAINST DOMESTIC VIOLENCE

In 2017 Croatia adopted a new National Strategy for Protection against Domestic Violence 2017-2022 based largely on the principles of the Istanbul Convention. The Strategy is comprehensive and envisages activities and concrete measures in seven areas, including prevention of domestic violence, improvement of the legislative framework, victim support, psychosocial treatment targeting the perpetrators, inter-sectoral cooperation, capacity building of experts and public awareness. Women organizations have expressed concerns, however, that the Strategy focuses strongly on the concept of the “conventional family”, and it does not adequately reflect the broader problem of gender-based violence.¹⁰ Furthermore, although it commits additional resources for the implementation, the Strategy fails to provide guarantees for more systematic and consistent financing of shelters and other support systems for the victims of domestic violence.¹¹ According to the Ombudsperson for Gender Equality, shelters and similar facilities are still not available in six of the 20 administrative regions in Croatia leaving victims without important support.¹²

PROSECUTION OF PERPETRATORS OF GENDER-BASED VIOLENCE

Croatia’s Criminal Code defines domestic violence as a criminal offence¹³ and prescribes a penalty of up to three years’ imprisonment for the perpetrators. Nevertheless, official government

⁶ Ministry for demography, family, youth and social policy of Republic of Croatia, Šta trebate znati o Konvenciji Vijeća Europe o sprečavanju i borbi protiv nasilja nad ženama i nasilja u obitelji, available at: <https://mdomsp.gov.hr/istanbulska-konvencija/index.html>. See also Gender Equality Ombudsperson of the Republic of Croatia *Izvešće o radu Pravobraniteljice za ravnopravnost spolova za 2018. godinu*, p. 87

⁷ Human Rights House, *Human Rights in Croatia Report for 2018*, 8 April 2019, para.210-211, available at: <https://humanrightshouse.org/articles/human-rights-in-croatia-overview-of-2018/>

⁸ Deutsche Welle, “Borba za zaštitu žena od nasilja u Hrvatskoj tek počinje”, 25 November 2018. Gender Equality Ombudsperson of the Republic of Croatia, *Izvešće o radu Pravobraniteljice za ravnopravnost spolova za 2018. godinu*, p. 115.

⁹ UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), *Concluding observations on the combined fourth and fifth periodic reports on Croatia*, para. 19, CEDAW C/HRV/CO/4-5, 28 July 2015.

¹⁰ Forum, “Unatoč otporu ‘obiteljaša’ – Vlada usvojila Strategiju protiv nasilja u obitelji temeljenu na Istanbulskoj konvenciji”, 22 September, 2017. Important to note that, at this time, Croatia does not have any other law regulating the broader gender-based violence.

¹¹ Gender Equality Ombudsperson of the Republic of Croatia, *Izvešće o radu Pravobraniteljice za ravnopravnost spolova za 2018. godinu*, p. 189.

¹² Gender Equality Ombudsperson of the Republic of Croatia, *Izvešće o radu Pravobraniteljice za ravnopravnost spolova za 2018. godinu*, p. 189.

¹³ Criminal Code of Republic of Croatia (Official Gazette 125/11, 144/12, 56/15, 61/15, 101/17), Article 179a.

data indicates that police and other responsible authorities rarely recognise acts of domestic violence as such. The police and the courts overwhelmingly fail to qualify violence that takes place within a family as a criminal act, and the vast majority – up to 90% - of such cases continue to be qualified as a misdemeanour.¹⁴ This systematically precludes stronger and more effective sanctions for perpetrators and protective measures for the victims, ultimately failing to combat gender-based violence effectively and to reduce the recurrence of such cases.

According to research undertaken by the Ombudsperson for Gender Equality, penalties for criminal offenses are rarely awarded, with fewer than 10% of the perpetrators sentenced to imprisonment, while most perpetrators received suspended sentences or moderate fines.¹⁵ Similarly, protective measures, both in criminal and misdemeanour courts, tend to be applied inconsistently and approved in significantly fewer cases than recommended by the police.¹⁶ This virtually renders many such measures ineffective and undermines the trust of the victims in the judicial system, contributing to an increasing number of unreported cases.¹⁷

DEFINITION OF RAPE

Croatia's existing legislation does not effectively criminalise rape.¹⁸ The Criminal Code distinguishes between two separate offences – the offense of rape and the offense of “sexual intercourse without consent”. While the definition of rape requires the lack of consent to be accompanied by force,¹⁹ the amendments to the Criminal Code in 2013 had introduced a lesser offense of “sexual intercourse without consent”, carrying lower penalties between six months and five years (as opposed to 1-10 years for rape).²⁰ In practice, the introduction of a separate offense has had a highly detrimental impact on the prosecution of rape, with most cases of marital rape and other cases of rape qualified and prosecuted as “sexual intercourse without consent” and the perpetrators sentenced to the minimum penalties of six months or less. The penalties for the perpetrators of rape are similarly low. More than 90% of cases of rape resulted in sentences of one year or less, and in some cases the perpetrators were released early for good behaviour.²¹ The provisions on rape and “sexual intercourse without consent” in Croatia were criticized by the CEDAW Committee in 2015, which had urged the state to harmonise its Criminal Code with international law and standards in this area.²²

In September 2019, the government announced a public consultation period for the proposed amendments to the Criminal Code that would abolish the separate offense of “sexual intercourse

¹⁴ Ministry for demography, family, youth and social policy of Republic of Croatia, *Šta trebate znati o Konvenciji Vijeća Europe o sprečavanju i borbi protiv nasilja nad ženama i nasilja u obitelji*.

¹⁵ Gender Equality Ombudsperson of the Republic of Croatia, *Izvešće o radu Pravobraniteljice za ravnopravnost spolova za 2018. godinu*, p. 119.

¹⁶ Gender Equality Ombudsperson of the Republic of Croatia, *Izvešće o radu Pravobraniteljice za ravnopravnost spolova za 2018. godinu*, p. 93.

¹⁷ Gender Equality Ombudsperson of the Republic of Croatia, *Izvešće o radu Pravobraniteljice za ravnopravnost spolova za 2018. godinu*, pp. 94-95.

¹⁸ Amnesty International, *Women across Europe failed by outdated rape legislation*, 24 November 2018, EUR 01/9452/2018.

¹⁹ Criminal Code of Republic of Croatia (Kazneni zakon) as amended in 2012, Art. 153.

²⁰ Criminal Code of Republic of Croatia (Kazneni zakon) as amended in 2012, Art 152(1).

²¹ Novi list, “Zemlja za manijake: Riskantnije je ukrasti auto nego silovati ženu u Hrvatskoj,” 7 September 2019, <http://www.novilist.hr/Vijesti/Hrvatska/ZEMLJA-ZA-MANIJAKE-Riskantnije-je-ukrasti-auto-nego-silovati-zenu-u-Hrvatskoj>

²² CEDAW, *Concluding observations on the combined fourth and fifth periodic reports on Croatia*, Para 18 (h), CEDAW C/HRV/CO/4-5, 28 July 2015.

without consent” and qualify this act as rape, punishable with three to ten years’ imprisonment.²³ This is a very welcome development and Amnesty International urges the authorities to work on challenging rape myths and stereotypes, as well as capacity building of the police and the judiciary to ensure that the amendments, once adopted, are properly implemented.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

ACCESS TO REPARATION FOR VICTIMS OF WARTIME SEXUAL VIOLENCE

ACCESS TO SEXUAL AND REPRODUCTIVE HEALTH SERVICES AND INFORMATION

Women’s access to sexual and reproductive health service and information, including contraception and abortion, is seriously constrained in Croatia. Although abortion on request in early pregnancy remains legal,²⁴ it is increasingly difficult to access. Widespread refusal by medical practitioners to perform abortions on the grounds of conscience, prohibitively high costs of services and uneven regional distribution of authorised public hospitals where the staff is willing to perform abortions, are some of the key obstacles facing women seeking to legally terminate a pregnancy.

Individual doctors, and in some cases entire healthcare institutions, continue to refuse abortions on the grounds of conscience, jeopardizing women’s access to these services. According to research carried out by the Ombudsperson for Gender Equality, out of 27 public hospitals and clinics in Croatia, all the doctors in five of the hospitals refused to provide the service and referred patients to other medical providers or hired outside support. In the remaining 22 hospitals, nearly 60% of doctors refused to perform the service on the grounds of conscience, which made abortions increasingly difficult to access.²⁵ Although required by law, most authorised providers tend not to have standardised procedures to collect official data about the prevalence of the refusals and referrals to other clinics.²⁶ This undermines the ability of the public health authorities to fully assess and address the impact of conscience-based refusals on the overall accessibility of abortion care.

²³ Hrvatska Radio Televizija, *Zakonska definicija silovanja bazirat će se na izostanku pristanka*, 12 September 2019, <https://vijesti.hrt.hr/541780/zakonska-definicija-silovanja-bazirat-ce-se-na-izostanku-pristanka>

²⁴ Article 15(2) of the Law on Health Care Measures for Exercising the Right to a Free Choice on Giving Birth provides that a woman can legally terminate pregnancy up to tenth week of pregnancy.

²⁵ Gender Equality Ombudsperson of the Republic of Croatia, *Izvešće o radu Pravobraniteljice za ravnopravnost spolova za 2018. godinu*, p. 315.

²⁶ Gender Equality Ombudsperson of the Republic of Croatia, *Izvešće o radu Pravobraniteljice za ravnopravnost spolova za 2018. godinu*, p. 315.

Although the Law on Medical Practice provides a possibility for individual doctors and other medical practitioners to refuse treatment and services on the grounds of their personal, ethical, religious or moral beliefs, it does not permit public health institutions to deny the service altogether. Yet, due to widespread conscience-based refusals in some clinics, refusal to provide the service has become the de facto institutional policy. The Ministry of Health and the Institute for Public Health have not taken steps to address this problem.

Access to abortion services also varies regionally. In some towns in the northeast of Croatia it is not possible to obtain such services in any of the local hospital or clinics.²⁷ Women are referred to other providers and often forced to travel to neighbouring towns at their own cost. This represents an insurmountable barrier for some women, in particular those of lower socio-economic status and encourages patients to seek clandestine services at great risk to their health.

The prohibitively high cost of lawful abortion services presents an additional barrier for many women. The procedure is not covered by the national Health Insurance Fund and the cost ranges anywhere between 250 – 450 Euro. This is a significant expense in a country where the average monthly income is 840 Euro.²⁸ According to the Ombudsperson for Gender Equality, the cost of abortion service has increased by approximately 20% over the past four years.²⁹

In March 2017, the Constitutional Court ruled against a challenge seeking to declare the 1978 Law regulating abortion unconstitutional and called on the National Assembly to adopt a new law within two years.³⁰ The Ministry of Health established an expert commission in 2018 to draft the new law, although it is unclear when the draft would be ready for public consultation.³¹ Women's right organisations have expressed concern about the composition of the Commission, which includes a number of conservative health professionals and others with hostile views on abortion, and no representatives of organisations advocating for sexual and reproductive rights.³²

Although the Constitutional Court ruling stated that the new law could not be prohibitive or further restrict the right to abortion, local activists fear that as the pressure from political and religious groups mounts, abortions would become more difficult to obtain due to the failure to effectively regulate conscience-based refusals and the imposition of mandatory waiting periods and biased counselling.³³

²⁷ RTL *Potruga*, "Dostupnost medicinske usluge prekida trudnoće", 4 March 2019, available at: <https://www.rtl.hr/vijesti-hr/potruga/3337815/potruga-istrazila-u-20-posto-bolnica-koje-su-na-popisu-da-ih-rade-pobacaje-ne-radi-nitko-od-zaposlenih/>

²⁸ Croatian Bureau of Statistics, Average monthly net and gross earnings of persons paid employment by accounting periods, 2018, available at: https://www.dzs.hr/Hrv_Eng/publication/2018/09-01-02_03_2018.htm

²⁹ Gender Equality Ombudsperson of the Republic of Croatia, *Izvešće o radu Pravobraniteljice za ravnopravnost spolova za 2018. godinu*, p. 316.

³⁰ Constitutional court of Republic of Croatia (Ustavni sud Republike Hrvatske), *Rješenje br: U-I-60/1991 i dr.*, 21 February 2017 (Official Gazette 25/2017)

³¹ Jutarnji list, "Kujundžić o novom zakonu o pobačaju", 25 November 2018, available at: <https://www.jutarnji.hr/vijesti/hrvatska/novi-zakon-o-pobacaju-u-rukama-konzervativnih-liječnika-otkrivamo-koji-od-njih-vec-odbijaju-raditi-abortionse-udruga-pobacaj-ce-postati-nedostupan/8107118/>
<https://www.jutarnji.hr/vijesti/hrvatska/kujundzic-o-novom-zakonu-o-pobacaju-da-radna-skupina-postoji-uistinu-radi-se-vrlo-ozbiljno-ali-ne-zelim-otkriti-imena-clanova/8097389/>

³² Jutarnji list, *Novi zakon o pobačaju u rukama konzervativnih liječnika*, 28 November 2018, <https://www.jutarnji.hr/vijesti/hrvatska/novi-zakon-o-pobacaju-u-rukama-konzervativnih-liječnika-otkrivamo-koji-od-njih-vec-odbijaju-raditi-abortionse-udruga-pobacaj-ce-postati-nedostupan/8107118/>

³³ H-Alter, *Kuda ide zakon o pobačaju*, 26 February 2018, <https://www.h-alter.org/vijesti/kuda-ide-zakon-o-pobacaju>

REFUGEE AND MIGRANT RIGHTS

In recent years, Croatia has failed to provide refugees with effective access to international protection and has used violence to keep people out of its territory. Since 2015, hundreds of thousands of people have travelled through Croatia, most of them fleeing poverty or conflict and intending to seek international protection in other EU countries. Following the closure of the so-called “Balkan route” through Hungary in 2015 and subsequently through Austria in 2016, refugees and migrants started arriving in Croatia in greater numbers.

PUSHBACKS AND COLLECTIVE EXPULSIONS

In response to the significant increase of people entering the country, the Croatian authorities have resorted to a policy of push-backs and collective expulsions, sometimes accompanied by violence and intimidation to prevent refugees and migrants from entering Croatia and gaining access to the European Union. Amnesty International and other organisations have documented numerous cases of people being apprehended deep inside Croatian territory, held for hours in police custody and then forcibly returned – in groups – to neighbouring Bosnia and Herzegovina.³⁴ Such returns take place largely without due process, outside of the official border crossings and without the required presence of Bosnian border officials.

Reports by human rights organisations and the media³⁵ show that pushbacks and collective expulsions to Bosnia and Herzegovina of persons irregularly entering Croatia are widespread and carried out summarily, without the procedural guarantees required by international and EU law. The practice documented at the borders does not include any safeguards against *refoulement*: it does not include any assessment of the individual circumstances and risks each individual would face upon their return. As people are returned outside of any formal process, they are not provided with legal assistance nor given an opportunity to challenge their expulsion, while at the same time refugees are denied the right to seek asylum. These failures amount to a violation of the prohibition of collective expulsions and a violation of the principle of *non-refoulement*. Because collective expulsions have resulted in people being returned to the country of last

³⁴ Amnesty International research carried out between June 2018 and June 2020 found that systemic and deliberate pushbacks and collective expulsions - sometimes accompanied with violence and intimidation – are a regular occurrence at the border between Croatia and Bosnia and Herzegovina. Among the 160 interviewed refugees and migrants stranded in the temporary accommodation camps in Bihać and Velika Kladuša, Bosnia and Herzegovina, nearly all confirmed being returned from Croatia, often multiple times and after having been held in police stations deep inside Croatian territory, without due process and without access to asylum procedures. One third of those interviewed had experienced violence at the hands of the Croatian police. Many described how they were beaten and intimidated and had their documents and mobile phones stolen or destroyed in what appears to be a deliberate practice by Croatian authorities designed to deter and discourage future attempts to enter the country. Amnesty International, *Pushed to the Edge, Violence and Abuse against Refugees and Migrants along the Balkans Route*, March 2019, (Index: EUR 05/9964/2019) <https://www.amnesty.org/en/documents/eur05/9964/2019/en/>.

³⁵ Amnesty International, *Pushed to the Edge, Violence and Abuse against Refugees and Migrants along the Balkans Route*, March 2019, Index: EUR 05/9964/2019, <https://www.amnesty.org/en/documents/eur05/9964/2019/en/>; Human Rights Watch, *Croatia: Migrants Pushed back to Bosnia and Herzegovina*, December 2019, <https://www.hrw.org/news/2018/12/11/croatia-migrants-pushed-back-bosnia-and-herzegovina>; Novi list, *Pravobraniteljica: Policija i dalje krši ljudska prava migranata. Krije kako ih tretiraju*, 18 October, 2018, <http://www.novilist.hr/Vijesti/Hrvatska/Pravobraniteljica-Policija-i-dalje-krsi-ljudska-prava-migranata.-Kriju-kako-ih-tretiraju>; No Name Kitchen, *Border Violence Reports*, January 2019, available at: <http://www.nonamekitchen.org/wp-content/uploads/2019/02/January-2019-Violence-Reports.pdf>; Council of Europe, *Commissioner calls on Croatia to investigate allegations of collective expulsions of migrants and of violence by law enforcement officers*, 5 October, 2018, <https://www.coe.int/en/web/commissioner/-/commissioner-calls-on-croatia-to-investigate-allegations-of-collective-expulsions-of-migrants-and-of-violence-by-law-enforcement-officers>.

departure without a proper assessment of potential risks upon their return, they are in breach of the EU and international law.³⁶

VIOLENCE AND INTIMIDATION BY THE CROATIAN POLICE

Testimonies by refugees and migrants consistently point to widespread, and increasing, violence and intimidation by the Croatian police and border guards.³⁷ This includes people being rounded up, shouted at and beaten with batons, stripped of their clothes and made to walk barefoot for kilometres, sometimes through freezing cold rivers and deep snow.

In May 2020, Amnesty International and the Guardian newspaper documented a series of alarming incidents, including one where a group of migrants and asylum-seekers trying to cross through Croatia were bound, brutally beaten and tortured for five hours by police officers who mocked their injuries and smeared food on their bleeding heads to humiliate them. The men told Amnesty International how officers wearing black uniforms and balaclavas fired their weapons in the air, kicked and repeatedly hit them with metal sticks, batons and pistol grips. Several armed men then rubbed ketchup, mayonnaise and sugar on migrants' bleeding heads and hair and their trousers, while others laughed and sang 'Happy Birthday' around the restrained men.³⁸

Earlier in May, the Guardian newspaper reported about a group of men who were found by Croatian police and subsequently beaten and forced across the border with orange crosses spray-

³⁶ Collective expulsions amount to a violation of the principle of *non-refoulement*. States are obliged to refrain from collective expulsions, regardless of whether the expulsion is carried out towards a country where risks would not exist upon return, simply due to the risks inherent in the failure to consider individual circumstances and in the denial of the right to remedy. See European Court of Human Rights, *Georgia v Russia*, App no 13255/07 (ECtHR 03 July 2014). See also Amnesty International, AIRE Centre, ECRE, ICJ, *Third party intervention before European Court of Human Rights, N.D. & N.T v. Spain*, 17 September, 2018, (Index: EUR 41/9109/2018), <https://www.amnesty.org/en/documents/eur41/9109/2018/en/>, and Amnesty International, *Human cost of fortress Europe: Human rights violations against migrants and refugees at Europe's borders*, 9 July 2014, (Index: EUR 05/001/2014), <https://www.amnesty.org/en/documents/EUR05/001/2014/en/>. Also, pushbacks could be in breach of international conventions, including Article 13 of the International Covenant for Civil and Political Rights (ICCPR), Article 33 of the 1951 Refugee Convention, Article 3 of the European Convention on Human Rights (ECHR), and Article 4 of Protocol 4 and Article 1 of Protocol 7 to the ECHR. They are also in violation of EU legislation, including the Schengen Borders Code, the Asylum Procedures Directive as well as Articles 18 (right to asylum), 19 (protection in the event of removal, expulsion or extradition), and 47 (right to an effective remedy and to a fair trial) of the Charter of Fundamental Rights of the European Union.

³⁷ Amnesty International, *Pushed to the Edge, Violence and Abuse against Refugees and Migrants along the Balkans Route*, March 2019, (Index: EUR 05/9964/2019), <https://www.amnesty.org/en/documents/eur05/9964/2019/en/>; Human Rights Watch, *Croatia: Migrants Pushed back to Bosnia and Herzegovina*, December 2019, <https://www.hrw.org/news/2018/12/11/croatia-migrants-pushed-back-bosnia-and-herzegovina>; The Guardian, *They didn't give a damn: first footage of Croatian police 'brutality'*, 14 November, 2019, <https://www.theguardian.com/global-development/2018/nov/14/didnt-give-a-damn-refugees-film-croatian-police-brutality-bosnia>; The New York Times, *As winter arrives, thousands of migrants are trapped in Bosnia*, 8 December, 2018, <https://www.nytimes.com/2018/12/08/world/europe/migrants-bihac-bosnia-croatia.html>

³⁸ Amnesty International, *Croatia: Fresh evidence of police abuse and torture of migrants and asylum-seekers*, 11 June, 2020, <https://www.amnesty.org/en/latest/news/2020/06/croatia-fresh-evidence-of-police-abuse-and-torture-of-migrants-and-asylumseekers/>; The Guardian, *EU 'covered up' Croatia's failure to protect migrants from border brutality*, 15 June 2020, <https://www.theguardian.com/global-development/2020/jun/15/eu-covered-up-croatias-failure-to-protect-migrants-from-border-brutality>

painted on their heads.³⁹ The United Nations' Special Rapporteur on human rights of migrants and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment called on Croatia to urgently investigate these reports of excessive use of force and police brutality and sanction those responsible.⁴⁰ In June and July, the Croatian Centre for Peace Studies filed two criminal complaints to the State Attorney's Office against Croatian police for the torture and degrading treatment of migrants and asylum-seekers in the above cases.⁴¹ The Attorney's Office has not formally opened an investigation in either case at the time of writing and it is not clear if the Croatian Ministry of Interior, which denied the reports, has initiated an internal investigation to look into the allegations.

In 2019, the Serbian Commissioner for Refugees and Migrants was investigating the case of a minor who was allegedly severely physically tortured, including with electric shocks, by the Croatian police.⁴² Similarly, the authorities in Bosnia and Herzegovina, including the Minister of Security, have repeatedly accused Croatian police of using physical violence against refugees and migrants prior to forcibly expelling them to Bosnia and Herzegovina.⁴³ Local authorities on the Bosnian side of the border report frequently finding people who were badly beaten, scared and in need of medical help.⁴⁴

The Croatian authorities have consistently denied the allegations of violence and have also failed to establish an effective and independent monitoring mechanism to ensure full compliance of their practices at the border with human rights and European Union laws.⁴⁵ Nevertheless, the country's President admitted in July 2019 that the Croatian police had been involved in pushbacks and had used "some necessary violence", but argued that this was "not illegal".⁴⁶

³⁹ The Guardian, *Croatian police accused of spray-painting heads of asylum-seekers*, 12 May 2020, <https://www.theguardian.com/global-development/2020/may/12/croatian-police-accused-of-shaving-and-spray-painting-heads-of-asylum-seekers>

⁴⁰ United Nations Office of the Human Rights Commissioner, *Croatia: Police brutality in migrant pushback operations must be investigated and sanctioned – UN Special Rapporteurs*, 19 June, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25976&LangID=E>

⁴¹ Balkan Insight, *NGO charges Croatian police with 'inhumane treatment of refugees*, 5 June 2020, <https://balkaninsight.com/2020/06/05/ngo-charges-croatian-police-with-inhumane-treatment-of-refugees/> and Center for Peace Studies, *CPS filed one more criminal complaint*, 23 July, 2020, <https://www.cms.hr/hr/azil-i-integracijske-politike/cms-podnio-kaznenu-prijavu-koja-je-poveznica-policije-i-naoruzanih-nasilnika-u-crnom>

⁴² Commissioner for refugees and migrants of Republic of Serbia, *Granična policija Hrvatske brutalno tuče migrante*, 1 September 2019, available at: http://www.kirs.gov.rs/wb-news-more.php?id_category=8&id=891, and RTS, *Svedočenje dečaka migranta za RTS: Hrvatski policajci su me tukli i mučili elektrošokovima*, 31 August 2019, available at: <http://www.rts.rs/page/stories/sr/story/125/drustvo/3644151/svedocenie-decaka-migranata-o-torturi-hrvatske-policije.html>

⁴³ Jutarnji list, *Bruka i sramota od jedne europske države, članice EU!' Ministar sigurnosti BiH tvrdi da posjeduje dokaze vraćanja i zlostavljanje migranantam* 16 December 2018, <https://www.jutarnji.hr/vijesti/hrvatska/bruka-i-sramota-od-jedne-europske-drzave-clanice-eu-ministar-sigurnosti-bih-tvrdi-da-posjeduje-dokaze-vracanja-i-zlostavljanje-migranata/8183861/>

⁴⁴ Interview with Una-Sana Canton Police Commissioner and Border Police conducted by Amnesty International in Velika Kladuša, 12-13 December 2018.

⁴⁵ The Guardian, *EU 'covered up' Croatia's failure to protect migrants from border brutality*, 15 June 2020, <https://www.theguardian.com/global-development/2020/jun/15/eu-covered-up-croatias-failure-to-protect-migrants-from-border-brutality>

⁴⁶ The Guardian, *Croatian police uses violence to push back migrants, president admits*, 16 July 2019, <https://www.theguardian.com/world/2019/jul/16/croatian-police-use-violence-to-push-back-migrants->

Credible accounts of abusive practices have been sufficiently frequent to point to a systematic and deliberate policy by the Croatian authorities to discourage new arrivals. Acts and treatments designed to cause significant mental or physical suffering to refugees and migrants could amount to torture and cruel, inhuman or degrading treatment or punishment, which is in breach of the non-derogable international human rights norm enshrined in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights and European Convention on Human Rights.

In July 2019, the Swiss Federal Administrative Court suspended the so-called “Dublin return” of an asylum-seeker to Croatia because of the risk of repeated pushback and violence which had left him with serious physical and psychological consequences.⁴⁷

TARGETING ORGANISATIONS SUPPORTING REFUGEE AND MIGRANT RIGHTS

As the allegations of violent pushbacks on the borders have mounted, the Croatian authorities have increasingly tried to discourage public scrutiny of their migration practices. The Ministry of the Interior has repeatedly denied the Office of the Ombudsperson access to information relating to migration-related activities. The Ombudsperson officially complained that her numerous requests for information about pending investigations into deaths of migrants and refugees and the allegations of police violence had been ignored by the Ministry of Interior and that several local police stations had denied her access to migrant-related data.⁴⁸

Throughout 2018, well-established organizations, including Are You Syrious? and the Center for Peace Studies (Centar za mirovne studije – CMS), that provide integration programs, legal aid and advocacy on migrant rights, have come under direct attack by the Ministry of Interior. This has included attempts to publicly delegitimize the organizations’ activities by suggesting that they have assisted migrants and refugees to “illegally enter” Croatia and tried to undermine the country’s efforts to join the Schengen zone.⁴⁹ Are You Syrious? and CMS have reported frequent intimidation and harassment of their staff and volunteers by the police after their activists were held in custody without formal charges and directly threatened because they criticized police activities at the borders.⁵⁰

[says-president](#), IndexHR, *Kolinda u šokantnom intervjuu priznala da hrvatska policija krši zakone*, 10 July 2019, available at: <https://www.index.hr/vijesti/clanak/kolinda-u-sokantnom-intervjuu-priznala-da-hrvatska-policija-krsi-zakone/2099829.aspx>

⁴⁷ Bundesverwaltungsgericht, *A. v Rechtsschutz für Asylsuchende – Bundesasylzentrum*, July 2019, https://www.cms.hr/system/article_document/doc/607/4_5978868576549865470.pdf

⁴⁸ Ombudsman of Republic of Croatia, *Human rights of migrants: complaints regarding police treatment still not investigated*, 18 October 2018, <http://ombudsman.hr/en/all-news/npm/npm-article/1498-migracije-prituzbe-na-policijsko-nasilje-i-dalje-nisu-istrazene>.

⁴⁹ NetHR, *Božinović teško optužuje udruge: CMS i ASY davali novac migrantima i poticali ih na ilegalni ulazak u Hrvatsku*, 20 April 2018, <https://net.hr/danas/hrvatska/ministar-bozinovic-tesko-optuzuje-udruge-cms-i-asy-davali-novac-migrantima-i-potalici-ih-na-ilegalni-ulazak-u-hrvatsku/>

⁵⁰ Findings included herein are based on interviews with the staff of Are You Syrious? and Center for Peace Studies conducted on 11 December in Zagreb, Croatia, the organizations’ Letter to the Members of the European Parliament, December 2018 (full text available to Amnesty International), as well as reports in the press (see, for example, Euractiv, *Spurned by authorities, humanitarian NGOs feel unsafe in Croatia*, 21 November 2018, <https://www.euractiv.com/section/justice-home-affairs/news/wed-spurned-by-authorities-humanitarian-ngos-feel-unsafe-in-croatia/> or Telegram, *Mučna priča o ljudima koji pomažu migrantima i MUP-u koji traži da se njihova udruga zabrani*, 5 October, 2018, <https://www.telegram.hr/price/mucna-prica-o-ljudima-koji-pomazu-migrantima-i-mup-u-koji-trazi-da-se-njihova-udruga-zabrani/>). For specific cases and accounts of increasingly hostile environment for the organizations promoting rights of migrants, refugees and asylum-seekers in Croatia, see Amnesty International, “Punishing compassion: Solidarity on trial in fortress Europe,” 3 March, 2020, (Index: EUR 01/1828/2020), <https://www.amnesty.org/en/documents/eur01/1828/2020/en/>.

The steady smear campaign⁵¹ has not only made it difficult for these organizations to carry out their work, it has also significantly harmed their reputation among the public and has had a chilling effect on their activists and other human rights defenders.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

WITH RESPECT TO GENDER-BASED VIOLENCE AND THE DEFINITION OF RAPE

Amnesty International calls on the government of Republic of Croatia to:

- Take concrete steps to fully harmonise legislative and policy framework pertaining to gender-based violence with the standards set out in the Istanbul Convention.
- Ensure there is a systematic and consistent capacity building for police officials, civil servants and court officials about gender equality and gender-based violence to ensure their common understanding of applicable international and EU standards and their consistent application across sectors.
- Amend the Law on Protection from Domestic Violence to introduce a broad definition of those covered by the law to include also persons in intimate relationships who do not share a joint residence, who were in a relationship less than three years or who do not have a child together to ensure that these victims have full protection under the law.
- Secure regular budgetary commitment to adequately fund the implementation of the National Strategy for the Protection against Domestic Violence, in particular to provide for the adequate operation of existing centres/shelters for victims of gender-based violence and opening of new shelters in the regions where they are not operational.

WITH RESPECT TO ACCESS TO SEXUAL AND REPRODUCTIVE HEALTH SERVICES AND INFORMATION

⁵¹ The smear campaign has not been limited to the authorities. CMS, for example, has waited for nearly two months to receive an official apology and the retraction of incorrect information from the public broadcaster Hrvatska Radio Televizija (HRT), which during a popular show “Otvoreno” provided space for multiple speakers who accused CMS of criminal offences of fraud and deception, facilitating illegal migration and undermining national security of Croatia, while failing to give CMS an opportunity to respond. Only after the CMS filed official complaint against the editor of HRT did the broadcaster issue an apology. Centar za mirovne studije, *HRT napokon objavio ispravak netočnih informacija objavljenih u emisiji OTVORENO*, 12 February 2019, <https://www.cms.hr/hr/novosti/hrt-napokon-objavio-ispravak-netocnih-informacija-objavljenih-u-emisiji-otvoreno>; HRT, *Otvoreno: Ugrožavaju li migranti sigurnost u Hrvatskoj?*, 18 December 2018, <https://vijesti.hrt.hr/478672/otvoreno-ugrozavaju-li-migranti-sigurnost-u-hrvatskoj>

Amnesty International calls on the government of Republic of Croatia to:

- Amend the Law on Medical Practice to ensure that conscience-based refusals by individual medical practitioners are adequately regulated to not impede women's access to sexual and reproductive health care in any way, including their access to safe and legal abortion. This should include automatic and timely referrals to alternative and easily accessible providers within a reasonable geographical reach in cases where clinics are not able to provide the service.
- Enforce a legal obligation for all providers to put in place and use a standardised system of data collection to obtain and maintain accurate information about the termination of pregnancies.
- Ensure that the legal abortion procedure is ultimately covered by the national Health Care Fund or that the cost of the procedure is not prohibitively high and subsidised for women of more vulnerable economic and social status.
- Conduct a public awareness campaign to ensure that women are adequately informed about their right to terminate a pregnancy that is primarily focused on their best interest.
- Take concrete steps to challenge rape myths and stereotypes and conduct capacity building of police and judiciary to ensure that the amendments introducing stricter penalties for rape, once adopted, are properly implemented.

WITH RESPECT TO REFUGEE AND MIGRANT RIGHTS

Amnesty International calls on the government of Republic of Croatia to:

- Ensure that all asylum-seekers have access to fair and effective asylum procedures, including an assessment of their claims for international protection on their merits in an individualized procedure.
- Immediately stop using force and intimidation to prevent refugees and migrants from accessing Croatian territory.
- Conduct independent, prompt and effective investigation into all allegations of violence and excessive use of force by the police against migrants and refugees and take appropriate action against the perpetrators.
- Establish an effective and independent monitoring mechanism to ensure full compliance of practices at the borders with fundamental human rights and international and EU laws.
- Ensure respect for existing monitoring and accountability mechanisms, including Ombudsman's Office and civil society, allowing for public and institutional scrutiny of Croatia's migration policies and practices.
- Provide access to information in police stations to the Office of the Ombudsperson in line with Croatian law and the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Stop the attacks on and harassment of non-governmental organisations promoting refugee and migrant rights in Croatia and their activists and provide safe and enabling environment for their work.
- Publicly condemn attacks, threats and intimidation against non-governmental organizations and human rights defenders.
- Refrain from feeding negative narratives concerning refugees and migrants and the organizations that promote their rights, and instead provide them with an enabling environment where they can operate free of fear of reprisals.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE⁵²

Amnesty International, *Europe: Human Rights in Europe - Review Of 2019*, 16 April 2020, Index: EUR 01/2098/2020

Amnesty International, *Punishing Compassion: Solidarity on trial in Fortress Europe*, 3 March 2020, Index: EUR 01/1828/2020

Amnesty International, *Pushed to the edge: Violence and abuse against refugees and migrants along the Balkans Route*, 13 March 2019, Index: EUR 05/9964/2019

Amnesty International, *Women across Europe failed by outdated rape legislation*, 24 November 2018, Index: EUR 01/9452/2018

Amnesty International Report 2017/18, Croatia, Index: POL 10/6700/2018

⁵² All these documents are available on Amnesty International's website:
<https://www.amnesty.org/en/countries/europe-and-central-asia/croatia/>

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